

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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4	WESTERFIELD, et al.,	:	
		:	06-CV-2817 (CBA)
5	Plaintiffs,	:	
		:	
6	v.	:	
		:	
7	WASHINGTON MUTUAL, INC.,	:	
		:	
8	Defendant.	:	
9	-----X		
10	JORDAN,	:	
		:	
11	Plaintiff,	:	08-CV-00287
		:	
12	v.	:	225 Cadman Plaza East
		:	Brooklyn, New York
13	WASHINGTON MUTUAL, INC.,	:	
		:	June 24, 2009
	Defendant.	:	
	-----X		

TRANSCRIPT OF CIVIL CAUSE FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
BEFORE THE HONORABLE JOAN M. AZRACK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: DONALD NICHOLS, ESQ.

For the Defendant: ANNE-MARIE ESTEVEZ, ESQ.
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1 (Proceedings began at 2:45 p.m.)

2 THE CLERK: This is Docket Number 08-CV-287,
3 Westerfield v. Washington Mutual and related cases. Civil
4 Cause for Preliminary Approval of Class Action Settlement.

5 Counsel, please state your appearances for the
6 record.

7 MR. NICHOLS: Don Nichols. I represent the
8 plaintiffs. Along with me is Adam Klein and Tim Selander of
9 my office.

10 MS. ESTEVEZ: Ann-Marie Estevez for the defendant.

11 THE COURT: Good afternoon. I have reviewed your
12 submissions and I think they are fine but just procedurally
13 what I'm going to need to do is recommend to Judge Amon that
14 she approve it. So while it's fine and I don't think there
15 are going to be any issues, I need to basically add and report
16 an recommendation on top of this to get this approved.

17 The only question I had as I went through all of
18 this is -- and I'm sure that you gave some consideration to
19 this. As you look at -- as you look to the future as to how
20 many people are likely to want to join this, have you worked
21 out the number such that you're sure you're going to have
22 enough money for everybody who might want to join? I guess
23 that's sort -- that was the only question that was looming.

24 MR. NICHOLS: I believe we have, Your Honor. The
25 way -- we have allocated for every single person at this point

1 possible.

2 THE COURT: Okay. The pot covers every single
3 person?

4 MR. NICHOLS: Yes. And in addition to that we've
5 added an additional feature. We've set aside \$250,000.00 to
6 take care of problems so we don't have to come back and see
7 you. Those problems will inevitably arise in any company that
8 closes down like this because we have bad data or the
9 misunderstandings in the data. For a number of reasons you're
10 going to have that. That \$250,000.00 will drop down to fifty
11 at the close and we'll allocate that \$250,000.00 back out.
12 There's no reversion to there defendant here. It all gets
13 out --

14 THE COURT: So it's a contingency fund will be --

15 MR. NICHOLS: Reduced to fifty but we're going to
16 keep that for I believe another year. We're going to reduce it
17 to fifty at that time and even if there are problems after
18 that we will attempt to take care of them. That's the only
19 way you can do something like this and get everybody --

20 THE COURT: That answers my question.

21 MR. NICHOLS: Everybody some money that they deserve.

22 THE COURT: That answers my question.

23 MR. NICHOLS: We've done every effort to do that,
24 exactly what you're asking.

25 THE COURT: That actually answers my question.

1 Now, were there dates -- do you have any dates -- do
2 you have dates to suggest?

3 MR. NICHOLS: Yes.

4 THE COURT: Because I would like to hear you on that.

5 MR. NICHOLS: The first date is the preliminary
6 approval which you're going to recommend.

7 THE COURT: Right.

8 MR. NICHOLS: We would like that as soon as possible.

9 THE COURT: I understand that.

10 MR. NICHOLS: The administrator is ready to mail next
11 week.

12 THE COURT: That's good for me to know.

13 MR. NICHOLS: Then because of the CAFA notices and so
14 forth, the earliest possible date is the last day in
15 September. So we would like the first available final hearing
16 date as soon as October 1st --

17 THE COURT: Okay.

18 MR. NICHOLS: -- or any time thereafter.

19 THE COURT: The earliest would be October 1st.

20 MR. NICHOLS: Well, essentially the last day in
21 September but October 1st. We would like that as soon as
22 possible and we need that date before we can mail because
23 that's included in the notice.

24 THE COURT: Wait. What would the October 1st date
25 be?

1 MR. NICHOLS: We need -- just need the date so that
2 we can include it in the notice. So we can't mail out until
3 we know the hearing date.

4 THE COURT: The fairness hearing is October 1st.

5 MR. NICHOLS: Yes.

6 THE COURT: So that's what I thought. Fairness
7 hearing would be at the earliest -- well, you'd like it to be
8 October 1st but as soon thereafter as possible.

9 MR. NICHOLS: Correct.

10 THE COURT: And you need that for your mailing
11 obviously. Any other dates?

12 MR. NICHOLS: No. I believe that was the only
13 critical dates.

14 THE COURT: All right.

15 MR. NICHOLS: I know when to shut up and this is
16 apparently the time. I have a lot to say but I'm willing to
17 shut up.

18 MS. ESTEVEZ: Just one thing. Can the parties agree
19 to have you enter an order approving this if both parties
20 agree?

21 THE COURT: I think you would have to do if you
22 wanted to proceed that way, you could consent to me just
23 doing -- sent to me for review and the preliminary approval.

24 MS. ESTEVEZ: Right.

25 THE COURT: You could do that. You have to fill out

1 consent forms. Then the rest would go to Judge Amon. I think
2 in the end she'd probably -- I don't want to speculate. She
3 may just send it all to me but you can do that. I need you to
4 consent to me today and I would approve it.

5 MS. ESTEVEZ: Can I just have one minute in the
6 hallway?

7 THE COURT: Yes. You can have one minute anywhere
8 you want.

9 MS. ESTEVEZ: Let me just make a phone call because I
10 don't think it's a problem at all.

11 THE CLERK: We're going off the record.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.



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5 _____
6 Shari Riemer

7 Dated: June 29, 2009
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